

Bill 35-11

Offenses – Loitering and Prowling - Established

Public Hearing

November 15, 2011

Good evening. My name is Kathleen Boucher. I am an Assistant Chief Administrative Officer with the Office of the County Executive and am here to testify against Bill 35-11 on behalf of County Executive Isiah Leggett.

Bill 35-11 is constitutionally questionable and practically unenforceable, given its vague provisions. The County Attorney believes that the Maryland Court of Appeals is likely to find the bill unconstitutional because it vests a police officer with virtually unfettered discretion to determine whether a person is committing the crime of loitering and prowling. The Court of Appeals' analysis would be heavily influenced by the impingement that the bill places on the otherwise constitutionally protected right of a person to move about in a public place.

Based on comments by the lead sponsor, the County Executive believes that this bill has been introduced for the purpose of confusing the debate on the curfew bill. Why else would an idea that was unanimously rejected by the Council in 2006 be resurrected with a slightly new twist in 2011? In 2006, the Council repealed the County's loitering law because it did not "provide a person of ordinary intelligence adequate notice of what conduct is forbidden in the statute."¹ Citing concerns about the constitutionality of the law, the Council deleted the term "loitering" from the County Code altogether and substituted concrete language that prohibited disorderly conduct.² Councilmember Andrews noted at the time that "loitering in and of itself . . . should not be considered a crime".³

Bill 35-11 is modeled after provisions of the Model Penal Code that have existed for almost 50 years, but Council staff has identified only seven states in which those provisions have been adopted. In four of those states (Idaho, Nebraska, Oregon, and Washington) the courts invalidated the laws as unconstitutional. The lead sponsor has indicated that Bill 35-11 is similar to laws in Florida and Georgia, which have been upheld by their respective state courts. The County Executive questions why Montgomery County should follow in the footsteps of Florida and Georgia when it comes to civil rights and constitutional freedoms.

In contrast to the "loitering and prowling" provisions of the Model Penal Code, curfew laws have been widely accepted throughout the United States. There are hundreds of curfew laws on the books throughout the country and they have repeatedly been upheld as constitutional.

¹ See Legislative Request Report for Bill 15-06, Offenses - Loitering.

² See Council Staff Packet for Bill 15-06, Offenses – Loitering on July 11, 2006.

³ See Minutes from the July 11, 2006 Council Session.

A 1997 survey conducted by the U.S. Conference of Mayors showed that four out of five cities with a population over 30,000 have nighttime curfews and city officials in those jurisdictions overwhelmingly believe that the curfew is a good tool for police officers and helps to make the streets safer for residents. Similarly, a 2000 survey of 446 police departments serving populations of at least 15,000 concluded that law enforcement personnel overwhelmingly believe that curfews are an effective tool for reducing various crimes.

Police Chief Thomas Manger has asked the Council to adopt the curfew bill because it will provide law enforcement personnel with an additional and valuable tool for preventing and dealing with nighttime crime. In contrast, he has questioned the value of Bill 35-11 and expressed serious concerns about its enforceability. Why would Council second guess the professional judgment of our highest law enforcement officer as to which bill would provide a useful tool for enhancing public safety? Chief Manger's concerns about the vagueness of Bill 35-11 – which would make it very difficult for police officers to enforce in a uniform and consistent manner -- dovetail with the County Attorney's concern that the bill would subject the County to significant risk of liability for false imprisonment, false arrest, and civil rights violations.

Bill 35-11 bill does nothing to address the vulnerability of our County that exists simply because youth curfews in neighboring Prince George's County and the District of Columbia drive youth to visit Montgomery County late at night because there is no curfew law here. The loitering bill does nothing to reduce the number of minors who are out late at night and at risk of becoming involved in criminal activity or the victims of criminal activity. There is no authority under the loitering bill for police officers to direct minors to go home if they are out late at night. The loitering bill does nothing to support parental responsibility for children. In sum, there is simply no logical relationship between the loitering and curfew bills.

On behalf of the County Executive, I urge you to reject Bill 35-11 and adopt the curfew bill. Thank you for the opportunity to testify tonight.